

FILED IN

COURT OF CRIMINAL APPEALS

COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

March 16, 2015

Transmitted 3/16/2015 10:35:28 AM

Accepted 3/16/2015 10:50:28 AM

ABEL ACOSTA

CLERK

ABEL ACOSTA, CLERK

No. AP-77,025

In the
Texas Court of Criminal Appeals
At Austin

granted
PC
3-16-15

No. 1384794

In the 337th Criminal District Court
Of Harris County, Texas

OBEL CRUZ-GARCIA

Appellant

V.

THE STATE OF TEXAS

Appellee

STATE'S FINAL MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLATE BRIEF

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

THE STATE OF TEXAS, pursuant to TEX. R. APP. P. 68.2(c) moves
for an extension of time within which to file its appellate brief. In support
of its motion, the State submits the following:

1. Appellant was charged by indictment with the felony offense of capital murder.
2. The case was tried before a jury who found appellant guilty as charged.
3. The jury answered the special issues.
4. The trial court assessed punishment at death, in accordance with Texas Code of Criminal Procedure article 37.071 section 2(g).

5. Sentence was entered July 22, 2013.
6. Direct appeal to this Court is automatic.
7. Appellant's brief was filed on September 15, 2014, after receiving extensions from this Court for a period of 9 months.
8. After two extensions, the State's appellate brief is due on March 16, 2015.
9. The State seeks an additional and final extension of 30 days to file its brief, until April 15, 2015.
10. The following facts are relied upon to show good cause for the requested extension:
 - a. During the previous two months, while reading the record in this case, the undersigned attorney filed 3 other appellate briefs.
 - b. Last month, the undersigned attorney presented oral argument to the Fourteenth Court of Appeals on the co-defendant's case, *Rogelio Aviles-Barroso v. State*, which involved a unique and complex issue of a voice identification made 20 years after the offense.
 - c. Last month, the undersigned attorney wrote an article for The Texas Prosecutor, the official journal of TDCOA, on this Court's recent holding in *Butcher v. State*.
 - d. As part of her duties as an appellate team member to the felony courts, the undersigned attorney completed 50 research projects for trial lawyers assigned to her in the last two months.
 - e. As part of her duties as the appellate team member for the Crimes Against Children Division, the undersigned attorney spent considerable time in researching, planning and drafting two criminal statutes as well as bill analysis for this legislative session – online solicitation of a minor and failure to report child abuse.

- f. The undersigned prosecutor is on call to present testimony in Austin this week and later this month for House and Senate hearings on the revisions to the online solicitation statute that was declared unconstitutional by this Court in *Ex Parte Lo*.
- g. Additionally, the undersigned attorney was out of the office last month due to a death in the family.
- h. The Appellate Division of the Harris County's DA's office is currently operating with one less prosecutor, resulting in a higher workload. One colleague was mobilized by the U.S. Navy and his position will not be replaced.
- i. The appellate record in the present case is voluminous, consisting of 35 volumes. Appellant brings 12 points of error on appeal. The undersigned attorney has completed review of the record and is now in the process of addressing appellant's complaints.
- j. The undersigned attorney has two other appellate briefs assigned to her that are due this month, *Cesar Russi v. State* and *Jesse Dains v. State*.
- k. The undersigned attorney requests a final extension of 30 days to complete briefing on this case and believes it will be completed by April 15, 2015.
- l. The State's motion is not for purposes of delay, but so that justice may be done.

WHEREFORE, the State prays that this Court will grant the requested extension until April 13, 2015.

Respectfully submitted,

/s/ Jessica Akins

JESSICA AKINS
Assistant District Attorney
State Bar Number: 24029415

CERTIFICATE OF SERVICE

Pursuant to TEX. R. APP. P. 9.5, this certifies that on March 16, 2015, a copy of the foregoing was sent to the following:

Wayne T. Hill
Attorney at Law
4615 Southwest Freeway, Suite 600
Houston, Texas 77027
wthlaw@aol.com

/s/ Jessica Akins

JESSICA AKINS
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5826
State Bar Number: 24029415
akins_jessica@dao.hctx.net